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# BOOK REVIEWS.

STUDIES IN JURIDICAL LAW. By Horace E. Smith. Chicago: T. H. Flood & Co. 1902. pp. xxvi, 359.

It would be a pleasure to give unqualified commendation to these essays of the late Dean of the Albany Law School. The ripened product of a cultivated mind and a sage understanding, betraying wide reading and much reflection on the problems of law and government, the book is, nevertheless, a disappointment. The truth is that with all of its merits, its sanity of view and clearness of statement, it belongs back in the Blackstonian period of our legal thought, back of Thayer and Pollock and Maitland, back of Holmes and Holland, back even of Maine and Austin. It betrays no knowledge of the literature of general jurisprudence, English or foreign, and it is free from any trace of influence from the speculations of the great German jurists of the last century.

These might not be fatal defects if the book were an original contribution to legal science, the result of independent thought and based on a new view of legal relations. But this it does not claim to be. It is avowedly orthodox and, from its definition of "law" in the first chapter to its description of feudalism in the sixteenth, follows steadfastly *in antiquas vias*. Its authorities are Blackstone, Kent and Bouvier for definition and classification, and Reeve, Palgrave, Spelman and Guizot for history. Of course, this does not exhaust the list of authorities consulted and cited, but it is fairly representative of the tone and attitude of the work.

Though for the most part written in direct and straightforward manner, there are some inexplicable infelicities in arrangement and presentation of the subjects treated, as in the curious repetition of the argument for the support of government by its citizens in sections 33 and 42, and in the discussion of modern trusts and combinations in the chapter on the Mosaic Code (Sec. 104).

And yet, with all this, the book is not one to be contemned. It is one of a class of works, too rare in our country, in which the fundamental principles of law and government are subjected to analysis. As an essay in legal classification, it leaves much to be desired, but it is through such attempts that we shall one day find ourselves possessed of a legal system. The *naïveté* of its analysis of rights and wrongs, as compared with that of Langdell, or of Holland and his school, is obvious enough, but every attempt at such an analysis is a clue out of the labyrinth of precedents.

The two concluding chapters on the Plea of Insanity and on Literary Property and International Copyright are much the best part of the book, but bear no relation to its general purpose.

CASES ON CRIMINAL LAW. Part I. By William E. Mikell. Philadelphia: International Printing Company, 1902. pp. 1-504.

This collection of cases is intended for use as a text-book in teaching the principles of the substantive law of crimes, and the author has based his method of selecting and arranging cases upon

principles now accepted by the leading law schools of the country as sound. The collection is composed of both English and American cases, about one-third of them being English. Most of them are reprinted in full without explanatory notes, and without the attempts at abridgment which so often impair the usefulness of the case book as an implement in teaching law by the case system. When portions of cases are omitted, the fact has been noted. There are numerous foot-notes collating the authorities and dealing with topics of minor importance not covered by the selected cases.

The avowed purpose of the work is to present the law as it is : to trace its growth and to indicate its future development. It is gratifying to note, however, that there is no attempt to make the collection purely illustrative. Many of the cases selected do not represent the law and thus ample material is afforded for developing the student's power of analysis and discrimination. The day has passed when it was necessary to advance any arguments to justify the use of cases of this character in any scholarly plan of legal education. As a whole the work is a worthy one, and we have no hesitancy in commending the author for it. Faults there are, none of them, however, of sufficient weight, in our opinion, to counterbalance the general merit of the work as planned. Perhaps the most serious criticism to be passed upon it is the infrequency, though not the absence, of the very early English cases which serve as points of departure in the development of legal principles. A more generous use also might well have been made of selection from such classics as Coke, East, Hale and Hawkins. They breathe the atmosphere which enveloped the beginnings of our criminal jurisprudence and at this day serve as authoritative expositions of the law at a time when the methods of reporting were clumsy and inadequate. Nor can we subscribe to the author's method of classification which seems to us by its very excessiveness to defeat, to some extent, the purpose of the work. Why, for example, arrange the cases relating to the criminal act in seven distinct classes and thus deprive the student of the valuable training which he would acquire in making his own classification with the aid and under the guidance of the instructor.

It may be doubted whether the author's plan of dealing with consent and condonation before taking up the subject of criminal intent and the criminal act is advantageous. Indeed, the effect of consent in the majority of cases cannot be determined without a thorough understanding of those essential elements in the crime.

The use of Pennsylvania cases which outnumber those of any other State in the ratio of three to one gives to the work a local color which will to some extent detract from its usefulness in the law schools of other States. The part now published deals only with the general principles of substantive Criminal law. Part II. which is in course of preparation will treat of specific crimes only. The complete work will therefore not include cases on procedure, extradition or the general subject of jurisdiction.

THE ELEMENTS OF THE LAW OF NEGOTIABLE INSTRUMENTS. By John W. Daniel and Charles A. Douglass. New York : Baker, Voorhis & Company. 1903. pp. xxxiv, 418.